

In re ) Fair Hearing No. 15,475  
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Appeal of )

The petitioner appeals the decision of the Department of Social Welfare denying her request for a power wheelchair. The issue is whether the petitioner's request meets the criteria for coverage under the pertinent regulations.

1. The petitioner is a forty-six-year-old woman who has been diagnosed with chronic fatigue syndrome. She lives in a house in a rural area.

2. The petitioner requested Medicaid payment for an electric wheelchair because it was initially felt by her medical providers that a powered wheelchair would assist her "community mobility and depression from isolation".

3. The Department denied the petitioner's request based on its conclusion that the petitioner was not chair or bed bound.

4. In response to an inquiry by the Department following the petitioner's request for fair hearing the petitioner's treating physician submitted the following report:

Thank you very much for your letter regarding [petitioner]. [Petitioner's] diagnosis is chronic

fatigue syndrome. Although I have not visited [petitioner's] domicile it is my understanding that she is living in a small house which has been evaluated by physical and occupational therapists for handicapped accessibility and adaptation to modifications have been made. [Petitioner] is not wheelchair bound. She is able to ambulate; however, she is not able to ambulate for long distances without becoming extremely fatigued.

This is the reason that she obtained the power wheelchair. She does not use the wheelchair continuously but does take it with her frequently when she has to go out and do tasks such as shopping. We have attempted to set up a series of home health aids to help her with such things as housecleaning and shopping but this has been unreliable. Therefore we felt it necessary for her to have access to the power wheelchair as needed.

5. It is found that the petitioner's limitations are as described in the above report.

#### ORDER

The decision of the Department is affirmed.

#### REASONS

The regulations adopted by the Department governing the state Medicaid program provide for durable medical equipment as follows:

Payment may be made for durable medical equipment ordered by a physician for use in the recipient's residence other than a health care institution; i.e., other than in a mental hospital, general hospital, skilled nursing home, intermediate care facility or intermediate care facility for the mentally retarded (ICF-MR). A medical necessity form completed by the physician must accompany the claim submitted by the provider.

Durable medical equipment is defined as equipment which:

Can withstand repeated use; and

Is primarily and customarily used to serve a medical purpose; and

Is generally not useful to a person in the absence of illness or injury; and

Is appropriate for use in the home.

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The regulations go on to provide that:

Covered items include:

Wheelchair; when the patient's condition is such that the alternative would be chair or bed confinement. Special feature and/or power operation must be referred to the Medicaid Division for special approval since coverage extends only to modifications which are medically required because of the patient's condition.

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Although the petitioner is limited in her activities due to her fatigue, the evidence supports the Department's contention that the petitioner does not need a wheelchair to avoid confinement to a bed or chair. Therefore, it cannot be concluded that the petitioner qualifies for a wheelchair under the above regulations.

There is no doubt that the petitioner would benefit from the wheelchair in terms of an improvement of her self-care and independence. Unfortunately for the petitioner, however, the Department has clearly determined in its regulations that the level of care to be provided is ambulation within the home in order to avoid confinement to bed or a chair. The Board has specifically held that the

federal statutes (see 42 U.S.C. § 1396) allow the Department to place practical limits on the level of rehabilitative care to be provided based upon the level of care which the state wishes to finance. Fair Hearing No. 13,298.

Inasmuch as the Department's decision in this matter is in accord with the above regulations the Board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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